

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROMANUS MILES : CIVIL ACTION
: NO. 94-4669
v. :
: ALFRED ELLIOT et al. :
: :
:

ORDER

AND NOW, this 10th day of March, 2011, upon consideration of plaintiff Romanus Miles' Motion for Sanctions and all responses thereto, it is ORDERED that plaintiff's motion is:

1. DENIED to the extent that it requests that a default judgment be entered against the City of Philadelphia;
2. DENIED to the extent that it requests that I grant plaintiff an adverse inference relating to the spoliation of evidence by any defendant;
3. DENIED without prejudice to the extent that it asks that I preclude defendants from introducing certain matters into evidence unless produced to plaintiff on or before July 30, 2010;
4. DENIED without prejudice to the extent that it asks that I prohibit defendants from relying on a witness unless the name and topic of testimony were disclosed in defendant's self-executing disclosures or in plaintiff's initial disclosures; and
5. GRANTED to the extent that it seeks an award of plaintiff's reasonable expenses, including attorneys fees incurred in conjunction with:
 - a. the instant motion for sanctions (Docket No. 73);

- b. plaintiff's motion to compel interrogatory answers (Docket No. 54);
- c. plaintiff's motion to compel production of documents and things (Docket No. 50);
- d. the deposition of Christopher Lewis originally scheduled for July 21, 2010;
- e. the Rule 30(b)(6) deposition of the City of Philadelphia originally scheduled for October 5, 2010; and
- f. the Rule 30(b)(6) depositions of designees Cesare, Long, and Prendergrast.

It is ORDERED that: (a) defendants shall pay plaintiff's reasonable expenses, including attorneys fees incurred in conjunction with items 5a,¹ 5b and 5c; (b) defendants City of Philadelphia and Christopher Lewis shall pay plaintiff's reasonable expenses, including attorneys fees incurred in conjunction with item 5d; and (c) defendant City of Philadelphia shall pay plaintiff's reasonable expenses, including attorneys fees incurred in conjunction with items 5e and 5f.

Plaintiff will have 21 days from the date of this Order to file an affidavit setting forth the foregoing expenses along with appropriate supporting documents. Defendants shall, within 21 days after receiving a copy of plaintiff's affidavit, pay to plaintiff the expenses detailed therein

¹ The reasonable expenses incurred in preparing plaintiff's motion for sanctions should not reflect time expended in preparing unsuccessful aspects of the motion. See Hensley v. Eckerhart, 461 U.S. 424, 436 (1983) ("the most critical factor [in assessing reasonable attorneys' fees] is the degree of success obtained").

unless defendants file objections to the reasonableness of such expenses with the court.

The court will entertain a request by plaintiff for a brief reopening of the discovery period to accommodate additional discovery or depositions that may be necessary to cure any prejudice created by defendant's dilatory conduct in discovery in this matter. If desired, plaintiff should contact the court within 10 days from the date of this order to schedule a teleconference to discuss reasonable additional discovery and reasonable amended deadlines. If plaintiff does not request a reopening of the discovery period, plaintiff's response to defendants' pending motion for summary judgement will be due on or before March 28, 2011.

s/Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.